



AN ACT AUTHORIZING INVESTOR-OWNED EQUINE SLAUGHTER OR PROCESSING FACILITIES; PROHIBITING A COURT FROM GRANTING AN INJUNCTION TO STOP OR DELAY THE CONSTRUCTION OF AN EQUINE SLAUGHTER OR PROCESSING FACILITY BASED ON LEGAL CHALLENGES OR APPEALS OF A PERMIT, LICENSE, CERTIFICATE, OR OTHER APPROVAL ISSUED IN CONJUNCTION WITH ENVIRONMENTAL LAWS; SETTING BONDING REQUIREMENTS; AND AMENDING SECTIONS 75-1-201, 75-2-104, 75-5-614, 75-5-621, 75-5-641, 81-9-111, 81-9-112, 81-9-115, 81-9-116, 81-9-201, 81-9-229, AND 81-9-230, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Equine slaughter or processing facilities -- no injunction to stop -- damages allowed for delay. (1) A court of this state may not issue an injunction stopping or delaying the construction of an equine slaughter or processing facility licensed pursuant to 81-9-201 based on a challenge or appeal of a permit, license, certificate, or other approval issued in conjunction with a proposed equine slaughter or processing facility based on the provisions of:

- (a) Title 75, chapter 1, parts 1 through 3;
- (b) Title 75, chapter 2, parts 1 through 4;
- (c) Title 75, chapter 5, part 4;
- (d) Title 75, chapter 10, part 1 and parts 3 through 13; or
- (e) Title 81, chapter 9, part 2.

(2) If a person files an action against the operation of an equine slaughter or processing facility and does not prevail, the person is liable for all financial losses the facility suffers if the court issues an injunction that halts operations while the action is pending.

Section 2. Judicial review of equine slaughter or processing facilities -- surety bond -- attorney fees -- venue. (1) (a) If an action is filed in district court to challenge the issuance of a license, permit, certificate,

or other approval for an equine slaughter or processing facility pursuant to Title 75 or Title 81, chapter 9, the court shall require a surety bond of the person filing the action. The bond must be set at an amount representing 20% of the estimated cost of building the facility or the operational costs of an existing facility.

(b) The bonding requirements of this subsection (1) do not apply to an indigent person.

(2) If the bond required under subsection (1) is not paid within 30 days of the filing of the action, the action must be dismissed.

(3) An action to challenge a decision to issue a license, permit, certificate, or other approval must be brought in the county or district court jurisdiction in which the facility will be built. If a facility would be located in more than one county, the action may be brought in any of the counties or district court jurisdictions in which the facility would be built.

(4) If the court determines that a judicial action challenging a license, permit, certificate, or other approval for an equine slaughter or processing plant was without merit or was for an improper purpose designed to harass, cause delay, or improperly interfere with the ongoing operation of a facility, the court may award attorney fees and costs incurred in defending the action.

(5) This section does not prevent a defendant in an action brought pursuant to this section from filing an action or counterclaim for any claim for relief available by law and does not limit the recovery that may be obtained in a claim for relief.

Section 3. Section 75-1-201, MCA, is amended to read:

"75-1-201. General directions -- environmental impact statements. (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) under this part, all agencies of the state, except the legislature and except as provided in subsection (2), shall:

(i) use a systematic, interdisciplinary approach that will ensure:

(A) the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking that may have an impact on the human environment; and

(B) that in any environmental review that is not subject to subsection (1)(b)(iv), when an agency

considers alternatives, the alternative analysis will be in compliance with the provisions of subsections (1)(b)(iv)(C)(I) through (1)(b)(iv)(C)(III) and, if requested by the project sponsor or if determined by the agency to be necessary, subsection (1)(b)(iv)(C)(IV);

(ii) identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking, along with economic and technical considerations;

(iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment are evaluated for regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D);

(iv) include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly affecting the quality of the human environment a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects that cannot be avoided if the proposal is implemented;

(C) alternatives to the proposed action. An analysis of any alternative included in the environmental review must comply with the following criteria:

(I) any alternative proposed must be reasonable, in that the alternative must be achievable under current technology and the alternative must be economically feasible as determined solely by the economic viability for similar projects having similar conditions and physical locations and determined without regard to the economic strength of the specific project sponsor;

(II) the agency proposing the alternative shall consult with the project sponsor regarding any proposed alternative, and the agency shall give due weight and consideration to the project sponsor's comments regarding the proposed alternative;

(III) if the project sponsor believes that an alternative is not reasonable as provided in subsection (1)(b)(iv)(C)(I), the project sponsor may request a review by the appropriate board, if any, of the agency's determination regarding the reasonableness of the alternative. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The agency may not charge the project sponsor for any of its activities associated with any review under this section. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208.

(IV) the agency shall complete a meaningful no-action alternative analysis. The no-action alternative analysis must include the projected beneficial and adverse environmental, social, and economic impact of the project's noncompletion.

(D) any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

(E) the relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity;

(F) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented;

(G) the customer fiscal impact analysis, if required by 69-2-216; and

(H) the details of the beneficial aspects of the proposed project, both short-term and long-term, and the economic advantages and disadvantages of the proposal;

(v) in accordance with the criteria set forth in subsection (1)(b)(iv)(C), study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources;

(vi) recognize the national and long-range character of environmental problems and, when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of the world environment;

(vii) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(viii) initiate and use ecological information in the planning and development of resource-oriented projects; and

(ix) assist the environmental quality council established by 5-16-101;

(c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved and with any local government, as defined in 7-12-1103, that may be directly impacted by the project. The responsible state official shall also consult with and

obtain comments from any state agency with respect to any regulation of private property involved. Copies of the statement and the comments and views of the appropriate state, federal, and local agencies that are authorized to develop and enforce environmental standards must be made available to the governor, the environmental quality council, and the public and must accompany the proposal through the existing agency review processes.

(d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency, either singly or in combination with other state agencies, does not trigger review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law.

(2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

(3) (a) In any action challenging or seeking review of an agency's decision that a statement pursuant to subsection (1)(b)(iv) is not required or that the statement is inadequate, the burden of proof is on the person challenging the decision. Except as provided in subsection (3)(b), in a challenge to the adequacy of a statement, a court may not consider any issue relating to the adequacy or content of the agency's environmental review document or evidence that was not first presented to the agency for the agency's consideration prior to the agency's decision. A court may not set aside the agency's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary or capricious or not in compliance with law. A customer fiscal impact analysis pursuant to 69-2-216 or an allegation that the customer fiscal impact analysis is inadequate may not be used as the basis of any action challenging or seeking review of the agency's decision.

(b) When new, material, and significant evidence or issues relating to the adequacy or content of the agency's environmental review document are presented to the district court that had not previously been presented to the agency for its consideration, the district court shall remand the new evidence or issue relating to the adequacy or content of the agency's environmental review document back to the agency for the agency's consideration and an opportunity to modify its findings of fact and administrative decision before the district court considers the evidence or issue relating to the adequacy or content of the agency's environmental review document within the administrative record under review. Immaterial or insignificant evidence or issues relating to the adequacy or content of the agency's environmental review document may not be remanded to the agency. The district court shall review the agency's findings and decision to determine whether they are supported by substantial, credible evidence within the administrative record under review.

(4) To the extent that the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) are inconsistent with federal requirements, the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) do not apply to an environmental review that is being prepared by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that is being prepared by a state agency to comply with the requirements of the National Environmental Policy Act.

(5) (a) The agency may not withhold, deny, or impose conditions on any permit or other authority to act based on parts 1 through 3 of this chapter.

(b) Nothing in this subsection (5) prevents a project sponsor and an agency from mutually developing measures that may, at the request of a project sponsor, be incorporated into a permit or other authority to act.

(c) Parts 1 through 3 of this chapter do not confer authority to an agency that is a project sponsor to modify a proposed project or action.

(6) (a) (i) A challenge to an agency action under this part may only be brought against a final agency action and may only be brought in district court or in federal court, whichever is appropriate.

(ii) Any action or proceeding challenging a final agency action alleging failure to comply with or inadequate compliance with a requirement under this part must be brought within 60 days of the action that is the subject of the challenge.

(iii) For an action taken by the board of land commissioners or the department of natural resources and conservation under Title 77, "final agency action" means the date that the board of land commissioners or the department of natural resources and conservation issues a final environmental review document under this part or the date that the board approves the action that is subject to this part, whichever is later.

(b) Any action or proceeding under subsection (6)(a)(ii) must take precedence over other cases or matters in the district court unless otherwise provided by law.

(c) Any judicial action or proceeding brought in district court under subsection (6)(a) involving an equine slaughter or processing facility must comply with [sections 1 and 2].

(7) The director of the agency responsible for the determination or recommendation shall endorse in writing any determination of significance made under subsection (1)(b)(iv) or any recommendation that a determination of significance be made.

(8) A project sponsor may request a review of the significance determination or recommendation made under subsection (7) by the appropriate board, if any. The appropriate board may, at its discretion, submit an

advisory recommendation to the agency regarding the issue. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208."

Section 4. Section 75-2-104, MCA, is amended to read:

"75-2-104. Limitations -- personal cause of action unabridged -- venue. (1) This chapter may not be construed to:

(a) grant to the board any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works, or shops;

(b) affect the relations between employers and employees with respect to or arising out of any condition of air contamination or air pollution;

(c) supersede or limit the applicability of any law or ordinance relating to sanitation, industrial health, or safety; or

(d) abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of a person to damages or other relief on account of injury to persons or property and to maintain an action or other appropriate proceeding.

(2) A judicial challenge to a permit issued pursuant to this chapter by a party other than the permit applicant or permitholder must include the party to whom the permit was issued unless otherwise agreed to by the permit applicant or permitholder. All judicial challenges of permits for projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.

(3) An action to challenge a permit decision pursuant to this chapter must be brought in the county in which the permitted activity will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur.

(4) A judicial action or proceeding pursuant to this chapter for an equine slaughter or processing facility must comply with [sections 1 and 2]."

Section 5. Section 75-5-614, MCA, is amended to read:

"75-5-614. Injunctions authorized. (1) ~~The~~ Except as provided in [section 1], the department is authorized to commence a civil action seeking appropriate relief, including a permanent or temporary injunction, for a violation that would be subject to a compliance order under 75-5-613. An action under this subsection may be commenced in the district court of the county where a violation occurs or is threatened, and the court has jurisdiction to restrain the violation and to require compliance.

(2) ~~The~~ Except as provided in [section 1], the department may bring an action for an injunction against the continuation of an alleged violation of the terms or conditions of a permit issued by the department or any rule or effluent standard promulgated under this chapter or against a person who fails to comply with an emergency order issued by the department under 75-5-621 or a final order of the board. The court to which the department applies for an injunction may issue a temporary injunction if it finds that there is reasonable cause to believe that the allegations of the department are true, and it may issue a temporary restraining order pending action on the temporary injunction."

Section 6. Section 75-5-621, MCA, is amended to read:

"75-5-621. Emergencies. (1) Notwithstanding other provisions of this chapter, if the department finds that a person is committing or is about to commit an act in violation of this chapter or an order or rule issued under this chapter that, if it occurs or continues, will cause substantial pollution the harmful effects of which will not be remedied immediately after the commission or cessation of the act, the department may order the person to stop, avoid, or moderate the act so that the substantial injury will not occur. The order is effective immediately upon receipt by the person to whom it is directed, unless the department provides otherwise.

(2) Notice of the order must conform to the requirements of 75-5-611(1) so far as practicable. The notice must indicate that the order is an emergency order.

(3) Upon issuing an order, the department shall fix a place and time for a hearing before the board, not later than 5 days after issuing the order unless the person to whom the order is directed requests a later time. The department may deny a request for a later time if it finds that the person to whom the order is directed is not complying with the order. The hearing must be conducted in the manner specified in 75-5-611. As soon as practicable after the hearing, the board shall affirm, modify, or set aside the order of the department. The order of the board must be accompanied by the information required in 75-5-611(6). An action for review of the order

of the board may be initiated in the manner specified in 75-5-641. ~~The~~ Except as provided in [section 1], the initiation of an action or taking of an appeal may not stay the effectiveness of the order unless the court finds that the board did not have reasonable cause to issue an order under this section."

Section 7. Section 75-5-641, MCA, is amended to read:

"75-5-641. Appeals from board orders -- review by district court. (1) An appeal of an order of the board ~~shall~~ must be in the district court of the county in which the alleged source of pollution is located.

(2) A person interested in the order may intervene, in the manner provided by the rules of civil procedure, if ~~he~~ the person shows good cause. An intervenor is a party for the purposes of this chapter.

(3) The attorney general shall represent the board if requested, or the department may appoint special counsel for the proceedings, subject to the approval of the attorney general.

(4) ~~The~~ Except as provided in [section 1], the initiation of an action for review or the taking of an appeal does not stay the effectiveness of ~~any~~ an order of the board unless the court finds that there is probable cause to believe:

(a) that refusal to grant a stay will cause serious harm to the affected party; and

(b) that ~~any~~ a violation found by the board will not continue or, if it does continue, ~~any~~ the harmful effects on state waters will be remedied immediately on the cessation of the violation.

(5) If a court does not stay the effectiveness of an order of the board, it may enforce compliance with that order by issuing a temporary restraining order or an injunction at the request of the board."

Section 8. Section 81-9-111, MCA, is amended to read:

"81-9-111. Hide certificates -- inspection of hides before disposal -- person slaughtering cattle or horses to exhibit hides. (1) ~~Every~~ A person or persons, firm, corporation, or association slaughtering cattle or horses for its own use must before selling, destroying, or otherwise disposing of the hide or hides from ~~such~~ the cattle or horses have the ~~same~~ hide or hides inspected by an officer authorized to make ~~such~~ the inspection and secure a certificate of inspection as ~~herein~~ provided for in this part.

(2) ~~It shall be unlawful for any~~ A person or persons, firm, corporation, or association ~~to~~ may not sell, offer for sale, destroy, or otherwise dispose of ~~any~~ a hide or hides from slaughtered cattle ~~which~~ or horses that have not been inspected and identified by an authorized inspector.

(3) It ~~shall be~~ is the duty of any person or persons, firm, corporation, or association slaughtering cattle or horses, for ~~his own personal~~ use or otherwise, upon demand of an authorized inspector, to exhibit the cattle or horse hide or hides ~~of such animal or animals~~ for inspection or certificate issued by a hide buyer or ~~some~~ evidence of inspection by an authorized inspector."

Section 9. Section 81-9-112, MCA, is amended to read:

"81-9-112. Inspection and marking of hides and meat of slaughtered cattle or horses -- records -- bill of sale -- when inspection not necessary. (1) All slaughtering establishments required to be licensed under 81-9-201 shall maintain the hide of an animal in its entirety with tail and ears attached for each animal slaughtered until inspected by a state or deputy state stock inspector in the county where the animal was slaughtered. The inspector shall mark the hide in the manner prescribed by the department. This inspection may be waived for ~~those~~ animals inspected by a state or deputy state stock inspector on a preslaughter inspection.

(2) Each dressed carcass of ~~such a slaughtered~~ animal ~~shall~~ must be stamped with an ink stamp in a manner specified by the department. The inspector shall keep a record and issue a certificate of inspection as specified by the department, giving the name and address of the establishment or person, the serial number of the inspection of the hide, the brand on the hide, if applicable, the date of inspection, and the place where the inspection was made. The inspector shall forward a copy of the inspection certificate to the department and issue one copy to the person requesting the inspection.

(3) When ownership of the carcass and hide presented is claimed on a bill of sale, the officer making the inspection shall demand and receive the original bill of sale, ~~which shall be attached~~ and attach it to the inspector's certificate sent to the county clerk and recorder. When the bills of sale cover cattle or horses not included in the inspection, the inspector shall issue to the owner of the bill of sale a receipt for the bill of sale. The receipt ~~shall~~ must describe the balance of the cattle or horses covered by the original bill of sale.

(4) ~~Any~~ A person who kills ~~beef or veal~~ livestock in good faith for ~~his~~ the person's own use ~~shall not be~~ is not required to have ~~such the~~ meat inspected or stamped."

Section 10. Section 81-9-115, MCA, is amended to read:

"81-9-115. Unlawful to purchase uninspected hide or carcass -- exception. ~~No~~ A person, firm, corporation, or association may not purchase the hide or carcass or any part thereof ~~of any beef or veal of~~

livestock slaughtered in a facility licensed pursuant to 81-9-201 without the inspection or identification ~~herein provided for~~ required by this part. The provision of this section does not apply to ~~any~~ a person who purchases from a licensed meat establishment ~~beef or veal meat~~ meat in quantities less than one quarter of an animal."

Section 11. Section 81-9-116, MCA, is amended to read:

"81-9-116. Officers' authority concerning enforcement -- seizure and sale of meat held in violation.

~~Any~~ An officer having authority to make the inspection ~~herein provided for~~ in this part may enter into and inspect meat establishments required to be licensed under 81-9-201 or places where ~~beef~~ meat is handled in quantities, for the purpose of determining whether the provisions of this part have been complied with. ~~In case~~ If meat is found ~~which~~ that is being held in violation of the provisions of this part, the officers may seize the ~~same~~ meat. All ~~seized~~ meat ~~so seized shall~~ must be sold under the direction of a stock inspector, sheriff, or other officer authorized, at either public or private sale, for the best price obtainable, and the proceeds ~~shall~~ must be paid to the county treasurer of the county in which ~~said~~ the meat is seized for the benefit of the general fund of ~~said~~ the county."

Section 12. Section 81-9-201, MCA, is amended to read:

"81-9-201. Meat establishment license -- fees and renewals. (1) It is unlawful for a person, firm, or corporation to engage in the business of slaughtering livestock or poultry, including the operation of a mobile slaughter facility as defined in 81-9-217, or processing, storing, or wholesaling livestock or poultry products without having a license issued by the department. The department shall establish an annual fee for a license issued under this section, to be paid into the state special revenue fund for the use of the department.

(2) All licenses expire each year on the anniversary date established by rule by the board of review established in 30-16-302 and must be renewed by the department on request of the licensee. However, when the department finds that the establishment for which the license is issued is not conducted in accordance with the rules and orders of the board made under 81-2-102, the department shall revoke the license and may not renew it until the establishment is in a sanitary condition in accordance with department rules.

(3) Investor-owned equine slaughter or processing facilities must be licensed pursuant to this section.

~~(3)(4)~~ (4) A person, firm, or corporation violating this section or any rule or order promulgated by authority of 81-2-102 is guilty of a misdemeanor and upon conviction shall be fined not more than \$500."

Section 13. Section 81-9-229, MCA, is amended to read:

"81-9-229. Assignment of inspectors. (1) The chief shall assign inspectors to each official establishment and may assign one inspector to two or more establishments.

(2) No establishment may slaughter or process ~~any~~ cattle, buffalo, horses, sheep, swine, goats, or poultry unless ~~there is~~ an assigned inspector is present. The hours of the day and days of each week, including holidays or weekends, when the establishment is slaughtering or processing meat must be satisfactorily arranged between the chief and each establishment. Establishments shall pay overtime fees to the board when services are rendered in excess of 8 hours a day or on holidays or weekends."

Section 14. Section 81-9-230, MCA, is amended to read:

"81-9-230. Antemortem and postmortem inspection required. (1) Official establishments must have an antemortem inspection. The inspector assigned to each establishment shall examine each animal immediately prior to slaughter ~~for the purpose of eliminating~~ to eliminate all unfit animals and ~~segregating~~ segregate for more thorough examination all animals suspected of being affected with a condition that might influence their disposition on postmortem inspection. The unfit animals may not enter the slaughtering facilities of the plant. The suspected animals ~~which after inspection~~ that are permitted to be slaughtered after inspection must be handled separately from the regular kill and given a special postmortem examination.

(2) Official establishments must have a postmortem inspection. The postmortem inspection must be made at the time the animals are slaughtered. The inspectors shall examine the cervical lymph glands, the skeletal lymph glands, the viscera and organs, with their lymph glands, and all exposed surfaces of the carcasses of all cattle, buffalo, horses, sheep, swine, and goats. The examination must be conducted in the slaughtering facilities of the establishment during the slaughtering operations.

(3) The chief or any of ~~his~~ the chief's inspectors may have a laboratory designated by the board make pathogenic examination of animals or animal parts ~~thereof~~ for completion of antemortem or postmortem inspection."

Section 15. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part

of Title 81, chapter 9, part 2, and the provisions of Title 81, chapter 9, part 2, apply to [sections 1 and 2].

- END -

I hereby certify that the within bill,
HB 0418, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2009.

President of the Senate

Signed this _____ day
of _____, 2009.

HOUSE BILL NO. 418

INTRODUCED BY BUTCHER, ANKNEY, BALES, DE. BARRETT, BELCOURT, BERRY, T. BROWN,
CAMPBELL, GEBHARDT, HINER, HINKLE, HOVEN, JONES, KERNS, KLOCK, MCCHESENEY, MILLER,
MORE, MURPHY, J. PETERSON, RANDALL, REGIER, RIPLEY, ROBERTS, SMITH, STAHL,
STEINBEISSER, TUTVEDT, VANCE, VINCENT, WAGNER, WARBURTON, WELBORN, WINDY BOY,
ZINKE, REICHNER, BEAN, KASTEN

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